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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 791

SAM TITLE, *Petitioner*,

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

The petitioner petitions for a rehearing of the order, entered May 18, 1959, denying the petition for certiorari.

After the petition for certiorari was filed, there appeared in the advance sheets the report of *United States* v. *Costello*, 171 F. Supp. 10 (S.D.N.Y.). That case was a renewal of a denaturalization suit which had previously been dismissed for the reason that the affidavit of good cause had not been filed with the

complaint. Id. at 14; *Costello* v. *United States*, 356 U. S. 256. The District Court made the following ruling in the renewed action (at 22, emphasis supplied):

> "Defendant's counsel argues that under Rule 41(b) of the Rules of Civil Procedure, 28 U. S. C. A., this dismissal operates as a final adjudication and constitutes a bar to further proceedings to denaturalize the defendant. The Court cannot agree with this contention. The rule provides that a dismissal 'other than a dismissal for lack of jurisdiction or improper venue' operates as an adjudication on the merits. The most that can be drawn from the decision is that the Supreme Court, in directing the dismissal of the first proceeding, was stating that unless an affidavit of good cause is filed with the complaint the United States Attorney has no jurisdiction to proceed with the denaturalization proceedings. *It was dismissing the action for failure to comply with what it deemed to be a jurisdictional requirement.*"

In the present case, the court below held (Pet. Appdx. 3a-4a) and the government urged (Opp. 6-7) that the non-filing of a good cause affidavit was not a jurisdictional defect so as to enable relief under Rule 60(b)(4). On this basis the petitioner was foreclosed from obtaining relief from a denaturalization judgment which (1) was concededly erroneous because of the non-filing of the affidavit; (2) was unsupported by the evidence; and (3) will result in a deportation order against petitioner. While petitioner is thus denied a second chance on the ground that the affidavit requirement is not jurisdictional, the government in the *Costello* case was given a second chance on the ground that the requirement is jurisdictional.

The *Costello* decision is, therefore, inconsistent with the holding below. The two decisions combine to es-

tablish a double standard which favors the government and prejudices the individual in denaturalization cases.

We submit that this situation, particularly when viewed in the light of the other considerations referred to in our petition for certiorari, warrants a reconsideration of the denial of the petition and a granting of certiorari.

Respectfully submitted,

JOSEPH FORER,
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Attorneys for Petitioner

CERTIFICATE OF COUNSEL

I certify that this petition is presented in good faith and not for delay and is restricted to grounds which are confined to intervening circumstances of substantial effect or to other substantial grounds available to petitioner although not previously presented.

JOSEPH FORER
Attorney for Petitioner